REMARKS

This responds to the Office Action mailed on February 6, 2008.

Claims 1, 15, 23, 31, and 35 are amended, claim 21 is canceled, and no claims are added; as a result, claims 1-20 and 22-38 are now pending in this application.

§*103 Rejection of the Claims*

Claims 1, 4, 5, 7-8, 11-12, 14-15, 18-19, 24-25, and 27-28 were rejected under 35 U.S.C. § 103(a) as being unpatentable over Vaidyanathan et al. (U.S. Publication No. 2004/0059596, hereinafter "Vaidyanathan") in view of Ojha et al. (U.S. Patent No. 6,598,026, hereinafter "Ojha").

Applicants respectfully submit that the rejection of claims 1 and 9 under 35 U.S.C. § 103 is defective for the reason that a person of ordinary skill in the relevant field in determining the scope and content of cited documents and understanding the differences between the cited documents and the independent claims of the present application would not conclude the independent claims are obvious.

Applicable Law

The test for obviousness is what the combined teachings of the references would have suggested to one of ordinary skill in the art. In *re Young,* 927 F.2d 588,591,18 USPQ2d 1089, 1091 (Fed. Cir. 1991) and In *re Keller,* 642 F.2d 413,425,208 USPQ 87 1, 881 (CCPA 1981). Moreover, in evaluating such references it is proper to take into account not only the specific teachings of the references but also the inferences which one skilled in the art would reasonably be expected to draw therefrom. In re *Preda,* 401 F.2d 825,826, 159 USPQ 342,344 (CCPA 1968). Thus, what is required in the analysis is "some articulated reasoning with some rational underpinning to support the legal conclusion of obviousness" and not "precise teachings directed to the specific subject matter of the challenged claim" when inferences and creative steps that a person of ordinary skill in the art would employ are taken into consideration. *See* KSR *Int'l Co.* v. *Teleflex Inc.,* 127 S. Ct. 1727,82 USPQ2d 1385,1396 (2007); *In re Kahn,* 441 F.3d 977,987-88,78 USPQ2d 1329, 1336 (Fed. Cir. 2006). In rejecting claims under 35 U.S.C. §103, the Examiner bears the initial burden of factually supporting any *prima facie* conclusion of

obviousness. *See* M.P.E.P. §2142. Further, to establish *prima facie* obviousness there must be some articulated reasoning with some rational underpinning to support the legal conclusion of obviousness."[1]

Argument

Applicant believes that the issue of patentablity over Vaidyanathan in view of Ojha is best understood with regard to the limitations of claim 1.

Claim 1 includes the following limitation:

> *updating a record associated with the failed transaction that is not completed by the party, the updating the record including incrementing a count of failed transactions not completed by the party.*

The Office Action, in rejecting claim 1, contends that Vaidyanathan teaches or suggests "updating a record associated with the failed transaction that is not completed by the party."[2] In support of this contention the Office Action highlights the following:

> A meta-rating forum on the performance of a particular party can be maintained, and the data stored on the forum regarding performances of sellers and buyers can be accessed. The data can relate to participation in the dispute resolution process, or can relate to compliance of a participant to the final decision made in the resolution of the dispute. An offender in the dispute resolution system can be highlighted. A market-based system can be used for assigning a specialist to a particular dispute. The dispute resolution system can be provided as an insurance covering transactions, where a seller in a transaction is a registered subscriber before a transaction is insured.[3]

The above quote from Vaidyanathan relates to data that may be stored on a meta-rating forum. The data can relate to participation of a party in a dispute resolution process. The data can also relate to compliance of a participant to the final decision made in the resolution of the

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[1] *In re Kahn*, 441 F.3d 977, 988, 78 USPQ2d 1329, 1336 (Fed. Cir. 2006). See also *KSR*, 550 U.S. at ___ , 82 USPQ2d at 1396 (quoting Federal Circuit statement with approval).
[2] Office Action mailed 02/06/2008, page 3.
[3] Vaidyanathan, excerpt from paragraph 11.

dispute. The above quote further relates that an offender in the dispute resolution system can also be highlighted.[4]

Further in regard to Vaidyanathan, the Office Action, in rejecting claim 1, stipulates that "Vaidyanathan fails to explicitly teach the updating of the record including incrementing a count of failed transactions not completed by the party"[5] but nevertheless alleges that Ojha discloses this limitation.

The Office Action alleges that Ojha discloses a "reputation metric"[6] consisting of the number of offers honored less the number reneged ... and such a reneging would constitute a failed transaction not completed by the buyer."[7] In support of this contention the Office Action highlights the following:

> According to a specific embodiment of the invention, even though the buyer's bids are non-binding, there is nevertheless a consequence for submitting frivolous bids. That is, the transaction site of the present invention may be configured to track a buyer's "reputation" by tracking the buyer's transaction behavior. For example, the number of bids submitted by a particular buyer could be related to the number of bids honored or reneged upon by that buyer, and an objective value could be generated therefrom indicative of the buyer's "reputation." According to a specific embodiment, the metric is simply the number of offers honored less the number reneged, a large positive value representing a "good" reputation and a large negative value representing a "bad" one.[8]

The above quote from Ojha relates a value that is indicative of a "buyers 'reputation'." The value is based on "*non-binding*" or "frivolous bids."

Claim 1 requires "updating a record associated with [a] failed transaction that is not completed by the party, the updating the record including incrementing a count of failed transactions not completed by the party." In contrast, Vaidyanathan relates to the storage of data that can relate to participation of a party in a dispute resolution process or compliance of a participant to the final decision made in the resolution of the dispute. Accordingly, the "data" as related by Vaidyanathan relates to the dispute resolution process and not a record associated with failed transaction that is not completed by the party, as required by claim 1. Further in contrast,

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[4] Vaidyanathan, excerpt from paragraph 11.
[5] Office Action mailed 02/06/2008, page 4.
[6] Id.
[7] Id.
[8] Ojha, col. 3, lines 22-43.

Ojha relates a value indicative of a buyers reputation that is based on *non-binding* or frivolous bids. A non-binding bid could hardly be said to be suggestive of "updating a record associated with [a] failed transaction" because a non-binding bid cannot constitute a transaction much less a failed transaction. Indeed, a non-binding bid is an offer and an offer, in and of itself, transacts nothing. Accordingly, a non-binding bid cannot possibly constitute a failed transaction because a non-binding bid merely signals an intention of one party. Broadly speaking, neither Vaidyanathan nor Ojha may be said to disclose the limitations of claim 1. Accordingly, a person having ordinary skill in the art would find significant differences between the references proffered and the invention of claim 1. Applicants respectfully submit that a person having ordinary skill in the art, having carefully considered Vaidyanathan and Ojha would conclude the limitations of claim 1 are nonobvious.

In summary, Applicants respectfully submit that a person having ordinary skill in the art, having carefully considered Vaidyanathan and Ojha, would not be able to make the inferences required to reach the limitations of claim 1 and would conclude the limitations of claim 1 to be nonobvious.

The above remarks are also applicable to independent claims 8, 11, and 28.

Claims 4, 5 and 7 depend on independent claim 1. Claims 8, 11, 12, and 14 depend on independent claim 8. Claims 18, 19, 24, 25, and 27 depend on independent claim 15.

As dependent claims are deemed to include all limitation of claims from which they depend, the rejection of claims 4, 5, 7, 8, 11, 12, 18, 19, 24, 25, and 27 under 35 U.S.C. § 103(a) is also addressed by the above remarks.

Claims 2-3, 6, 9-10, 13, 16-17, 20, 22-23, 26 and 29-34 were rejected under 35 U.S.C. § 103(a) as being unpatentable over Vaidyanathan in view of Ojha as applied to claims 1, 4-5, 7-8, 11-12, 14-15, 18-19, 24-25 and 27-28 above, and further in view of eBay's Website (www.ebay.com) on October 14, 1999, as viewed on the Wayback Machine (www.archive.org), hereinafter "eBay".

Applicants respectfully submit that the rejection of the claims 2-3, 6, 9-10, 13, 16-17, 20, 22-23, 26 and 29-34 under 35 U.S.C. § 103 is defective for the reason that a person having ordinary skill in the art, having carefully considered the cited references, would not conclude the limitations of claim 1 are obvious.

The Office Action does not rely on eBay to reject the above quoted limitations of claim 1. Accordingly, eBay cannot provide what is lacking in the combination of Vaidyanathan and Ojha to support a rejection of the claims 2-3, 6, 9-10, 13, 16-17, 20, 22-23, 26 and 29-34 under 35 U.S.C. § 103(a)

In summary, a person having ordinary skill in the art, having carefully considered Vaidyanathan and Ojha, whether alone or in combination, would not conclude the limitations of claim 1 are obvious as is required to support a *prime facie* case of obviousness in rejecting of the independent claims of the present application under 35 U.S.C.§ 103.

CONCLUSION

Applicants respectfully submit that the claims are in condition for allowance, and notification to that effect is earnestly requested. The Examiner is invited to telephone Applicants' attorney at 408-278-4046 to facilitate prosecution of this application.

If necessary, please charge any additional fees or credit overpayment to Deposit Account No. 19-0743.

Respectfully submitted,

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Date June 5, 2008

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CERTIFICATE UNDER 37 CFR 1.8: The undersigned hereby certifies that this correspondence is being filed using the USPTO's electronic filing system EFS-Web, and is addressed to: Mail Stop Amendment, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450 on this 5 day of June, 2008.

CHRIS BARTEL
Name

Signature